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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/727,747	12/04/2003	Harry C. Deckler	Kinze 34	7203	
7590	10/18/2005		EXAMINER BELLINGER, JASON R		
James J. Hill Emrich & Dithmar Ste. 3000 300 South Wacker Drive Chicago, IL 60606			ART UNIT		PAPER NUMBER
			3617		
DATE MAILED: 10/18/2005					

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/727,747	Applicant(s) DECKLER ET AL.	
	Examiner Jason R. Bellinger	Art Unit 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7, 8, 16-22 and 24 is/are rejected.
- 7) ☒ Claim(s) 4-6, 11-15 and 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

*1.12*

***Allowable Subject Matter***

1. The indicated allowability of claims 7-8 is withdrawn in view of the newly discovered reference(s) to Johnson and Oertley. Rejections based on the newly cited reference(s) follow.

***Claim Objections***

2. Claims 1, 10, 16, and 23 are objected to because of the following informalities: A colon (:) should be inserted after the term "comprising" in line 2 of claim 1.

The phrase "characterized in that" in line 1 of claim 10 should be removed, due to the fact that it does not contain any structure or further define the invention.

The term --said-- should be inserted prior to the term "upright" in line 13 of claim 16.

The term "of" should be replaced with the term --about-- or --from-- or an equivalent prior to the phrase "an axis" in line 5 of claim 23.

These corrections are for clarity. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

4. Claims 7 and 16-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 7 is indefinite due to the fact that it is

Art Unit: 3617

unclear what is actually being claimed by the limitation that the segments are "integrally formed of metal".

Claim 16 is indefinite due to that fact that the phrase "mounting surface" in line 9 is a double recitation. "Generally upright mounting surfaces" have been previously set forth in line 4 of the claim. Therefore, it is unclear whether the "mounting surface" set forth in line 9 is referring to only one of the "mounting surfaces" previously set forth in line 4, or is an additional element of the invention.

***Claim Rejections - 35 USC § 102***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Brittain et al. Brittain et al shows a wheel 22 for an endless track 28 having a hub including a disc-shaped mounting member (34 & 36) extending generally perpendicular to the axis of rotation of the hub, and having a width substantially less than the width of the track 28. The hub also includes a circumferential contact surface (40 & 42) of uniform spacing from the axis of rotation, and first and second lateral mounting surfaces 46 on opposite sides of the mounting member (34 & 36). First and second pluralities of wheel segments 50 are mounted to the first and second lateral mounting surfaces 46 of the mounting member (34 & 36).

Each of the wheel segments 50 include at least one axially extending support element for supporting the track 28 (see Figure 4), and a first locator surface (namely an end portion that abuts portion of the hub which forms the groove 38) for contacting the circumferential contact surface (40 & 42) for locating the wheel segments 50 in the radial direction, and a second locator surface (namely the bottom surface of the segment) for contacting one of the lateral mounting surfaces 46 of the mounting member (34 & 36) to locate the wheel segments axially.

The hub includes an annular outer section that defines the circumferential contact surface (40 & 42) and first and second lateral mounting surfaces 46. The circumferential contact surface (40 & 42) is centered on the axis of rotation of the hub. The lateral surfaces 46 are generally planar.

***Claim Rejections - 35 USC § 103***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 1-3, 7, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of Oertley ('041). In Figure 2, Johnson shows a wheel 10 for an endless track 54 having a hub 20 including a disc-shaped mounting member 22 extending generally perpendicular to the axis of rotation of the hub 20, and having a width substantially less than the width of the track 54. The hub 20 also includes a circumferential contact surface (namely the radially outer portion of the mounting

Art Unit: 3617

member 22 and the element 24) of uniform spacing from the axis of rotation, and first and second lateral mounting surfaces (26 & 28) on opposite sides of the mounting member 22.

A plurality of wheel segments (12 & 14) include at least one axially extending support element (48 & 50) for supporting the track 54, and a first locator surface (namely the axially extending portions at each wheel segment base) for contacting the circumferential contact surface (generally at 24) for locating the wheel segments (12 & 14) in the radial direction, and a second locator surface (namely the bottom surface of each segment) for contacting one of the lateral mounting surfaces (26 & 28) of the mounting member 22 to locate the wheel segments (12 & 14) axially.

The hub 20 includes an annular outer section that defines the circumferential contact surface (generally at 24) and first and second lateral mounting surfaces (12 & 14). The circumferential contact surface (generally at 24) is centered on the axis of rotation of the hub 20. The lateral surfaces (12 & 14) are generally planar.

A threaded fastener 42 is received in an aperture in the base of each wheel segment (12 & 14) to secure the opposing segments together and to the hub 20 (through the mounting member 22).

Johnson does not show the wheel segments being formed of first and second pluralities of wheel segments, or that each wheel segment is formed of metal. Oertley (041) teaches the use of a wheel 20 having first 50 and second 52 pluralities of wheel segments (see Figure 2). As best understood, these wheel segments (50 & 52) are integrally formed of metal. Therefore from this teaching, it would have been obvious to

Art Unit: 3617

one of ordinary skill in the art at the time of the invention to form the wheel segments of Johnson from metal, in order to reduce wear of the wheel, thus reducing maintenance costs; and to form the wheel segments of Johnson from a plurality of segments, for the purpose of allowing replacement of damaged segments without having to remove the entire wheel from the endless track assembly.

While Johnson as modified by Oertley does not specify that the wheel segments are produced by casting, a reference that shows a product that is identical to, or an obvious variant of, a product set forth in a product-by-process claim is considered to meet the product-by-process claim if the product can be produced by a different method. See also MPEP § 2113. In this case, the wheel segments could be produced by machining or powder metallurgy processes.

9. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of Oertley (041) as applied to claims 1-3, 7, and 24 above, and further in view of Oertley (043 B2). Johnson as modified by Oertley ('041) does not show the first plurality of wheel segments being angularly offset relative to the second plurality of wheel segments.

Oertley ('043) teaches the use of a first plurality of wheel segments 40 that are angularly offset relative to the second plurality of wheel segments 42. Therefore from this teaching, it would have been obvious to one of ordinary skill in the art at the time of the invention to angularly offset the first plurality of wheel segments of Johnson as modified by Oertley ('041) with the second plurality of wheel segments for the purpose

of allowing a wheel segment to be in contact with the track at all times during rotation of the wheel, thus reducing wear on the track.

***Allowable Subject Matter***

10. Claims 4-6 and 11-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Claim 10 would be allowable if rewritten to overcome the objection(s) set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

12. Claim 23 would be allowable if rewritten or amended to overcome the objection(s) set forth in this Office action.

13. Claims 16-22 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

***Response to Arguments***

14. Applicant's arguments filed 25 July 2005 have been fully considered but they are not persuasive. The Applicant argues that the Brittain et al reference does not include a



Art Unit: 3617

hub with a "disc-shaped mounting member having a width substantially less than width of the track and extending generally perpendicular to an axis of rotation of the hub".

The hub portion of the wheel of Brittain et al is considered to be the area immediately surrounding the central aperture. Elements 34 and 36 are therefore considered to be "disc-shaped mounting members", and have widths that are "substantially less than the width of the track (as clearly shown in Figure 4) and also extend perpendicular to the axis of rotation of the wheel.

The Applicant further argues that the hub lacks "circumferential contact surfaces" and "lateral mounting surfaces on opposite sides of the mounting member". Elements 40 and 42 define circumferential contact surfaces that provide "uniform spacing from the axis of rotation". The claims do not specify what element of the invention is uniformly spaced by these contact surfaces. However, the element 46, which acts as lateral mounting surfaces for the wheel segments, are uniformly spaced from the rotational axis by elements 40 and 42.

The Applicant further argues that Brittain et al does not show "circumferentially spaced support elements, each having a belt-engaging surface" which "cooperate to form support for said belt". However, support elements 50 are clearly circumferentially spaced (see Figure 2), and have a belt-engaging surface (as shown in Figure 4) that supports the belt.

Therefore, for the above reasons, Brittain et al is still considered to meet the limitations of the claims.

The Applicant states that the "cast metal segment" was apparently the reason for claim 23 being indicated as being allowable. However, it was the structure set forth in the claim that caused the indication of allowable subject matter, not the process limitation of the metal segment being "cast". See MPEP 2113.

15. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., reduced assembly and repair time, the wheel not having to be removed from the track during repair, etc.) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

16. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Art Unit: 3617

**Conclusion**

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Smith reference shows a wheel having a segment attached to a radially extending mounting member of a hub.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason R. Bellinger whose telephone number is 571-272-6680. The examiner can normally be reached on Mon - Thurs (9:00-4:30).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jason R Bellinger  
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